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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,157	07/03/2003	Mark Isom Richards	IOI-457	9205
45488	7590	10/17/2005		
WILLIAMS, MORGAN & AMERSON, P.C./ZIMMER 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
DATE MAILED: 10/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,157

Applicant(s)

RICHARDS, MARK ISOM

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/2/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris et al. (2003/0050703) in view of Errico et al (5,667,508).

With respect to claims 1, 8, 16, Harris et al disclose an acetabular shell (52) an arcetabular articulating component (54) having a partial spherical shape with an inner surface forming spherical cavity adapted to receive a femoral ball, the articulating component being connectable to the shell; and an acetabular constraining component (56) connectable to the articulating component and having a ring shape body or circular body with two extension extending outwardly from the body and two cutouts and outer surface that extends inwardly toward a center of the articular body portion; as best seen in FIGS.3-4.

It is noted that Harris did not teach did not teach of extensions having a triangular cross section, as claimed by applicant. However, in a similar art, Errico et al evidence the use of a constraining device having a ring shape with extensions having a triangular cross section to permit the extension to deflect so that the hole may expand and contract upon a head.

Therefore, given the teaching of Errico et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the

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extensions of Harris et al, as taught by Errico et al to permit the extension to deflect so that the hole may expand and contract upon a head.

With respect to claims 2-7, 9-15, 17-20, the above combination of references teaches all the limitations, as set forth in Harris et al., para [0046-0051], para [0057-0058], and as best seen in FIGS.1-4; and, as best seen in Errico et al. column 6, lines 52-67, column 7, lines 1-5, and as best seen in FIGS.5a-b.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,425,778	06-1995	Zichner et al.
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4,795,471	01-1989	Oh
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
October 11, 2005


PEDRO PHILOGENE
PRIMARY EXAMINER